IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3868 OF 2005

Smt.Neelam Anil Gautam).. Petitioner

Versus

Ravindra I.Sethana and others).. Respondents

Mr.B.K. Raje for the Petitioner.

Mr.D.B. Sawant for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 17TH OCTOBER 2005

P.C.:

. This Petition challenges the orders passed by the two Courts below on the Obstructionist Notice taken out by the Plaintiffs. The Plaintiffs had filed a Suit against the Respondent-Defendant claiming the suit property on various grounds. The Suit was decreed by an order dated 6th November 1997. The Appeal preferred has also resulted in the same fate. The Petitioner was found in possession of the suit premises and, therefore, an Obstructionist Notice was taken out by the Plaintiffs. Both the Courts below have found that the Petitioner’s contention that she had entered into a Deed of Assignment with the Defendant to run the business is not acceptable. The document purportedly being the Deed of Assignment is not believed by both the Courts below. I, therefore, see no reason to interfere with the findings of the Courts on

this aspect.

2. Apart from this, the Petitioner contends in the Writ Petition that the Suit itself was not maintainable and the decree passed is nullity because the trust was not joined as a party Defendant. There is no dispute that all the trustees are the Plaintiffs in the Suit. However, it is now contended in the Petition that not only the trustees but the trust also must be made party as a Plaintiff. Reliance is placed by the learned Advocate for the petitioner on the judgments in *Mohammad Nuru Huda* vs. *Kikabhoy and another*, **AIR 1953 NAGPUR 251**, *Papular Art Printers* vs. *Shri Rushikul Brahmacharya Ashram Trust*, **1999 Vol. (2) Bombay L.R. 702** and *M/s.Saraswat Trading Agency* vs. *Union of India and others*, **AIR 2004 CAL 267** in support of the submission that a trust must be made a party since the trust was the lessor. It is submitted that the trust is the landlord as contemplated under Section 5(3) of the Rent Act, being the lessor of the suit property and therefore it was a necessary party.

3. In my view, this submission cannot be accepted since the trustees are the Plaintiffs in the Suit and have sued the Defendant on behalf of the trust. The trust itself is not a necessary party as long as all the trustees are made parties to the proceedings. A trust

can be sued or can sue in the name of the trustees and it is not necessary that the trust itself should be made a party to the Suit. Further, under Section 5(3) landlord includes any person who is entitled to receive rent in respect of any premises whether on his own account or as a trustee. There is no material on record to indicate that the trustees i.e. the Respondents herein were not landlords within the meaning of Section 5(3) of the Act. Therefore the Suit filed by the Respondents was maintainable. Apart from this, no such contention was raised before either of the Courts below, but in the Writ Petition for the first time. The judgments cited by the learned Advocate for the Petitioner do not advance the case of the Petitioner. Petition rejected.

4. On the application of the learned Advocate for the Petitioner, operation of this order is stayed for eight weeks from today.